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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,230	08/31/2006	Ulrike Schulz	P29300	2143
7055 7590 10/17/2008 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER				
BROOKS, KRISTIE LATRICE				
ART UNIT		PAPER NUMBER		
1616				
NOTIFICATION DATE		DELIVERY MODE		
10/17/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

### Office Action Summary

**Application No.**

10/574,230

**Applicant(s)**

SCHULZ ET AL.

**Examiner**

KRISTIE L. BROOKS

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Status of Claims**

1. New Examiner of Record. Kristie L. Brooks. Art Unit 1616.
  2. Claims 16-45 are pending.
  3. Receipt and consideration of Applicants remarks filed May 7, 2008 is acknowledged.
  4. Rejections not reiterated from the previous Office Action are hereby withdrawn.
- The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

### ***Claim Rejections – 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites "which is based on a microemulsion." It is unclear what Applicant intends by the phrase. It is unclear if the formulation is a microemulsion or is a formulation derived from a microemulsion. For purposes of Examination, the Examiner has interpreted the composition to be in the form of a microemulsion.

Claim 16 recites "(a) at least one of an antiperspirant active ingredient and a deodorant active ingredient." It is unclear whether the active is chosen between an

antiperspirant or a deodorant, or whether the microemulsion contains both an antiperspirant and a deodorant. For purposes of examination, the Examiner has interpreted the active to be at least one of an antiperspirant active ingredient or a deodorant active ingredient.

***Claim Rejections – 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 16, 19, 25-27, 31-33, 36-40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruning et al. (US 6,942,871).

Applicant claims a cosmetic formulation which is based on a microemulsion and comprises (a) at least one of an antiperspirant active ingredient and a deodorant active ingredient and (b) at least one  $\alpha$ -hydroxycarboxylic acid.

**Determination of the scope and content of the prior art**  
**(MPEP 2141.01)**

Bruning et al. teach a microemulsion gel composition comprising aluminum zirconium salts in the amount of 5-40% (see the abstract. Column 4 lines 60-67, and column 7 lines 55-57). The microemulsion can contain polyethoxylated and polypropoxylated emulsifiers (see column 5 lines 29-37). The formulations may contain additional ingredients such as deodorants and  $\alpha$ -hydroxy acids (e.g. citric acid, lactic acid, malic acid) (see column 7 lines 63-67 and column 9 lines 3-5 and lines 35-56).

**Ascertainment of the difference between the prior art and the claims**  
**(MPEP 2141.02)**

Bruning et al. do not exemplify the instant components in a microemulsion.

**Finding of prima facie obviousness Rational and Motivation**  
**(MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make a microemulsion comprising at least one antiperspirant active ingredient or deodorant active ingredient and at least one  $\alpha$ -hydroxycarboxylic acid because it is known in the art to prepare microemulsions with antiperspirant actives and  $\alpha$ -hydroxycarboxylic acids as suggested by Bruning .

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to prepare a microemulsion with antiperspirant actives and  $\alpha$ -hydroxycarboxylic acids since they are both useful components in the preparation of antiperspirant gels and sticks based on microemulsions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

8. Claims 18, 20-24, 42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruning et al. (US 6,942,871) in view of Diec et al. (US 6,468,551).

Applicant claims a cosmetic formulation which is based on a microemulsion and comprises (a) at least one of an antiperspirant active ingredient and a deodorant active ingredient and (b) at least one  $\alpha$ -hydroxycarboxylic acid.

**Determination of the scope and content of the prior art**  
**(MPEP 2141.01)**

Bruning et al. teach a microemulsion gel composition comprising aluminum zirconium salts in the amount of 5-40% (see the abstract. Column 4 lines 60-67, and column 7 lines 55-57). The microemulsion can contain polyethoxylated and polypropoxylated emulsifiers (see column 5 lines 29-37). The formulations may contain additional ingredients such as deodorants and  $\alpha$ -hydroxy acids (e.g. citric acid, lactic acid, malic acid) (see column 7 lines 63-67 and column 9 lines 3-5 and lines 35-56).

**Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)**

Bruning et al. do not specifically teach a oil-in-water microemulsion which comprises an oil phase, a water phase and emulsifiers. This deficiency is cured by the teachings of Diec et al.

Diec et al. teach microemulsion gels based on the oil in water type, comprising an oil phase, substantially consisting of not easily volatile constituents, and an aqueous phase containing one or more O/W emulsifiers free from ethylene oxide and propylene oxide and possibly one or more additional O/W emulsifiers, an emulsifier content which is lower than 20 wt. % related to the full weight of the microemulsion (see the abstract, column 7 lines 50-67 and column 8 lines 1-10). The microemulsion gel is obtained in such a way that a mixture of basic constituents, consisting of an aqueous phase, an oil phase, one or more O/W emulsifiers, possibly one or more additional O/W emulsifiers, additional or active agents, is made to react against each other in a mixing ratio so that a microemulsion can be obtained and in which droplets of discontinuous oil phase are bound to each other by one or more cross-linking substances, whose molecules are characterized by at least one hydrophylic area having a suitable expansion for bridging of distance between each microemulsion droplet and at least one hydrophobic area, which can interact hydrophobically with the microemulsion droplets( abstract, column 7 lines 50-67 and column 8 lines 1-10 ). It is advantageous to add W/O emulsifiers to the

microemulsion gel (see column 23 lines 51-67). The microemulsion gels can be used as bases for cosmetic deodorant/antiperspirants (see column 26 lines 47-67 and column 27 lines 1-17). The microemulsion gels are stable and provide good skin tolerability (see column 4 lines 32).

**Finding of prima facie obviousness Rational and Motivation**  
**(MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make a oil-in-water microemulsion comprising an oil phase, water phase and an emulsifier because antiperspirant microemulsion gel comprising an oil phase, water phase and emulsifiers are known to be stable and provide good skin tolerability as suggested by Diec et al.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to prepare in the manner taught by Diec et al. for the purpose of providing stability to the composition and enhanced benefits to the and skin.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

9. Claims 17, 43 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruning et al. (US 6,942,871) in view of Diec et al. (US 6,468,551), further in view of Hart (US 4,078,050).



Applicant claims a cosmetic formulation which is based on a microemulsion and comprises (a) at least one of an antiperspirant active ingredient and a deodorant active ingredient and (b) at least one  $\alpha$ -hydroxycarboxylic acid.

**Determination of the scope and content of the prior art**  
**(MPEP 2141.01)**

Bruning et al. teach a microemulsion gel composition comprising aluminum zirconium salts in the amount of 5-40% (see the abstract. Column 4 lines 60-67, and column 7 lines 55-57). The microemulsion can contain polyethoxylated and polypropoxylated emulsifiers (see column 5 lines 29-37). The formulations may contain additional ingredients such as deodorants and  $\alpha$ -hydroxy acids (e.g. citric acid, lactic acid, malic acid) (see column 7 lines 63-67 and column 9 lines 3-5 and lines 35-56).

Diec et al. teach microemulsion gels based on the oil in water type, comprising an oil phase, substantially consisting of not easily volatile constituents, and an aqueous phase containing one or more O/W emulsifiers free from ethylene oxide and propylene oxide and possibly one or more additional O/W emulsifiers, an emulsifier content which is lower than 20 wt. % related to the full weight of the microemulsion (see the abstract, column 7 lines 50-67 and column 8 lines 1-10). The microemulsion gel is obtained in such a way that a mixture of basic constituents, consisting of an aqueous phase, an oil phase, one or more O/W emulsifiers, possibly one or more additional O/W emulsifiers, additional or active agents, is made to react against each other in a mixing ratio so that

a microemulsion can be obtained and in which droplets of discontinuous oil phase are bound to each other by one or more cross-linking substances, whose molecules are characterized by at least one hydrophylic area having a suitable expansion for bridging of distance between each microemulsion droplet and at least one hydrophobic area, which can interact hydrophobically with the microemulsion droplets( abstract, column 7 lines 50-67 and column 8 lines 1-10 ). It is advantageous to add W/O emulsifiers to the microemulsion gel (see column 23 lines 51-67). The microemulsion gels can be used as bases for cosmetic deodorant/antiperspirants (see column 26 lines 47-67 and column 27 lines 1-17). The microemulsion gels are stable and provide good skin tolerability (see column 4 lines 32).

**Ascertainment of the difference between the prior art and the claims  
(MPEP 2141.02)**

Bruning et al. and Diec et al. do not teach the  $\alpha$ -hydroxycarboxylic acid, mandelic acid. This deficiency is cured by the teachings of Hart.

Hart teaches deodorant compositions comprising novel deodorant material (see the abstract and column 1 lines 12-14). The compositions can contain acid  $\alpha$ -hydroxycarboxylic acids, such as, glycolic, citric, mandelic lactic and tartaric acid (see column 3 lines 24-27).

**Finding of prima facie obviousness Rational and Motivation  
(MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to incorporate mandelic acid because Bruning et al. teach the antiperspirant or deodorant microemulsion gels can contain  $\alpha$ -hydroxycarboxylic acids. Mandelic acid is also a  $\alpha$ -hydroxycarboxylic acid capable of use in antiperspirant or deodorant compositions as suggested by Hart.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to substitute mandelic acid into the compositions taught by Bruning et al. since it is an obvious variation of  $\alpha$ -hydroxycarboxylic acids capable of use in antiperspirant or deodorant compositions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

### ***Conclusion***

10. This action is non-final.
11. No claims are allowed.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616